

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 1 - 3, 5, 6, 8 - 18 and 20 - 27 are pending in the application. Currently, claims 1 - 2, 5, 6, and 8 - 18 stand rejected and claims 20 - 27 stand withdrawn from consideration as being directed to a non-elected invention.

By the present amendment, claims 1 and 11 have been amended.

In the office action mailed November 17, 2005, claims 1 - 3, 5, 6, and 8 - 18 were rejected under 35 U.S.C. 112, second paragraph as being indefinite; claims 1, 5, 8, and 9 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,201,530 to Kelch; claims 1 - 3, 5, 6 - 9, 11, 12, 14, 15, 17, and 18 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,480,165 to Flower; claims 6 and 13 were rejected under 35 U.S.C. 103(a) as being unpatentable over Flower; and claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kelch in view of Fellenstein.

The foregoing rejections are traversed by the present response.

The present invention relates to a brush seal for sealing a gap between first and second components. The brush seal comprises a back plate, a side plate, a set of contacting bristles that engages the second component, and a set of non-contacting bristles that extends toward, but does not engage, the second component. The set of non-contacting bristles have a length. The set of non-contacting bristles resides between the set of contacting bristles and the side plate and abuts the set

of contacting bristles substantially along a majority of its length.

The rejection on indefiniteness grounds is improper in so far as it relates to claims 11 - 18 since the objectionable phrase is not present in any of these claims.

With regard to claims 1 - 3, 5, 6, and 8 - 10, the indefiniteness rejection is now moot. Claim 1 has been amended to clarify the claimed subject matter.

It is further submitted that the rejection of claims 1, 5, 8, and 9 is now moot. Claim 1 as amended calls for the second set of bristles to be located between the side plate and the first set of bristles and for the first set of bristles to have a length greater than the length of the second bristles. The claim also calls for the second set of bristles to cooperate with the side plate to reduce windage effects on the first set of bristles. Kelch does not have such a construction. The bristles which have the longer length abut the side plate. Anything which can be called the second set of bristles in Kelch would not cooperate with the side plate to reduce windage effects on anything that could be called the first set of bristles.

Claims 5, 8, and 9 are allowable over Kelch for the same reasons that claim 1 is allowable as well as on their own accord.

For these reasons, the Examiner is hereby requested to withdraw the rejection of claims 1, 5, 8, and 9 as being anticipated by Kelch.

With regard to the rejection of claims 1 - 3, 5, 6 - 9, 11, 12, 14, 15, 17, and 18, the rejection has been mooted by the amendment to claims 1 and 11. In particular, claim 1 is allowable because Flower does not disclose an embodiment having

the claimed features - in particular, "a second set of bristles between said first set of bristles and said side plate, said second set of bristles having a length and abutting said first set of bristles at a point adjacent a joint between said back plate and said side plate and substantially along said length."

Independent claim 11 is allowable because Flower does not disclose an embodiment having the claimed features - in particular, "said set of non-contacting bristles resides between said set of contacting bristles and said side plate and abuts said set of contacting bristles substantially along a majority of said length." In the embodiment of FIG. 6, the set of non-contact bristles does not abut the set of contacting bristles substantially along a majority of the length.

The claims which depend from claims 1 and 11 are allowable for the same reason that their parent claims are allowable as well as on their own accord.

With regard to the obviousness rejection of claims 6 and 13, there is nothing in Flower which teaches or suggests the claimed difference between the first and second lay angles. Absent such a teaching, suggestion, or motivation to make the claimed subject matter, it is inappropriate for the Examiner to say that the claimed difference is obvious. The fact that something may be within the skill of one in the art is not sufficient to render a finding of obviousness. More is required - namely, a teaching, suggestion, or motivation to modify the reference. The rejection fails because the Examiner has not provided the required teaching, suggestion, or motivation.

With regard to the rejection of claim 10, it is submitted that claim 10 is allowable for the same reason as claim 1. The Fellenstein reference does not cure the deficiencies of Kelch and Flower.

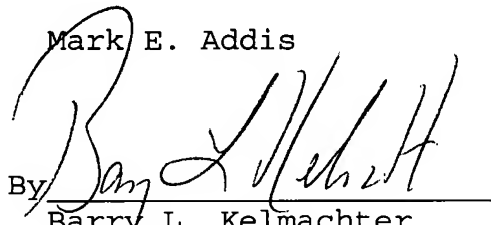
The instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, he is hereby invited to contact Applicants' attorney at the telephone number listed below.

No fee is believed to be due as a result of this response. Should the Director determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 21-0279.

Respectfully submitted,

Mark E. Addis

By 
Barry L. Kelmachter
BACHMAN & LaPOINTE, P.C.
Reg. No. 29,999
Attorney for Applicant

Telephone: (203) 777-6628 ext. 112

Telefax: (203) 865-0297

Email: docket@bachlap.com

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I, Nicole Motzer, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on February 9, 2005.

